



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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# STAATSKOERANT

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1247.

7 October 1998

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7 Oktober 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 66 of 1998: Magistrates Amendment Act, 1998.

No. 66 van 1998: Wysigingswet op Landdroste, 1998.

## GENERAL EXPLANATORY NOTE:

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

## ACT

To amend the Magistrates' Courts Act, 1944, so as to effect certain consequential amendments; to make provision for the creation of administrative regions; to further regulate the appointment of magistrates; to further regulate the exercising of administrative control over the functions performed by magistrates; and to increase the penal jurisdiction of magistrates' courts; to amend the Magistrates Act, 1993, so as to regulate the assignment of administrative functions to magistrates; to make provision for certain penalty provisions to be prescribed by regulation; and to provide for matters connected therewith.

*(English text signed by the President.)*  
*(Assented to 28 September 1998.)*

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982, section 2 of Act 34 of 1986 and section 1 of Act 4 of 1991**

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1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended—

- (a) by the insertion before the definition of "court" of the following definition:  
 " 'administrative region' means an administrative region created by the Minister under section 2(2);"
- (b) by the substitution for the definition of "court of appeal" of the following definition:  
 " 'court of appeal' means the [provincial or local division of the Supreme Court] High Court to which an appeal lies from the magistrates court;"
- (c) by the insertion after the definition of "court of appeal" of the following definition:  
 " 'head of the administrative region' means the magistrate designated as such by the Minister, after consultation with the Magistrates Commission;"
- (d) by the insertion after the definition of "magistrate" of the following definition:  
 " 'Magistrates Commission' means the Magistrates Commission estab-

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lished by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993);”:  
and

(e) by the substitution for the definition of “Minister.” of the following definition:  
“ ‘Minister. [, in section 15 (2) and (4) and in section 113,] means the  
Minister of Justice: [and in any other provision of this Act, ‘Minister’  
in relation to any matter to be dealt with in a regional division,  
district or subdistrict administered under the control of the Minister  
of Justice, and in relation to the creation or abolition of any such  
regional division, district or subdistrict, means that Minister or any  
other Minister of State acting on his behalf;] . . .

**Amendment of section 2 of Act 32 of 1944, as substituted by section 2 of Act 53 of 1970 and amended by section 7 of Act 102 of 1972 and section 2 of Act 34 of 1986**

2. Section 2 of the Magistrates. Courts Act, 1944, is hereby amended by the addition of the following subsection:

“(2) The Minister may, by notice in the Gazette and after consultation with the Magistrates Commission, join any group of districts together to create an administrative region for administrative purposes . . . .

**Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993 and section 3 of Act 104 of 1996**

3. Section 9 of the Magistrates’ Courts Act, 1944, is hereby amended—

(a) by the substitution for paragraph (aA) of subsection ( 1 ) of the following paragraph:

“(aA) The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate...

(b) by the substitution for paragraph (b) of subsection ( 1 ) of the following paragraph:

“(b) No person shall be appointed as a magistrate of a regional division unless he [is a **magistrate who**] or she has satisfied all the requirements for the degree of *baccalaureus legum* of a university in the Republic or has passed the Public Service Senior Law Examination or an examination deemed by the [Public Service Commission] Minister to be equivalent or superior to the said examination, and the [board referred to in section 9bis] Magistrates Commission has informed the Minister that he or she is suitable for appointment as a magistrate of a regional division... and

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister, or an officer in the Department of Justice or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint any other competent person to act in the place of the absent or incapacitated magistrate, additional magistrate or assistant magistrate, as the case may be, during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that no person shall be appointed as an acting magistrate of a regional division unless he or she has satisfied all the requirements for the degree referred to in subsection

(1)(b) or has passed an examination referred to in that subsection: Provided further that when any such vacancy has remained unfilled for a continuous period exceeding three months the fact shall be reported to the Magistrates Commission [established by section 2 of the Magistrates Act, 1993 (Act 90 of 1993)].

(4) The Minister or an officer in the Department of Justice or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint temporarily any competent person to act either generally or in a particular matter as magistrate of a regional division in addition to any magistrate or acting magistrate of that division or as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate.”.

#### Substitution of section 10 of Act 32 of 1944

4. The following section is hereby substituted for section 10 of the Magistrates' Courts Act, 1944:

##### “Qualifications for appointments of judicial officers

**10.** Subject to the provisions of the [law governing the public service] Magistrates Act, 1993 [Act No. 90 of 1993], and of section [eleven] 11—

(a) a person who has not before the commencement of [this Act] the Magistrates Amendment Act, 1998, held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of [this Act] the Magistrates Amendment Act, 1998, held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he or she has passed the civil service lower law examination or an examination declared by the [Public Service Commission] Minister to be equivalent thereto:

(b) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the [Public Service Commission] Magistrates Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto.”.

#### Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952 and section 25 of Act 94 of 1974

5. Section 12 of the Magistrates' Courts Act, 1944, is hereby amended by the addition to subsection (1) of the following paragraph:

“(c) shall be subject to the administrative control of the head of the administrative region in which his or her district is situate.”.

#### Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977, section 1 of Act 109 of 1984, section 9 of Act 25 of 1987, section 2 of Act 129 of 1993 and section 2 of Act 33 of 1997

6. Section 92 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding [twelve months] three years, where the court is not the court of a regional division, or not exceeding [ten] 15 years, where the court is the court of a regional division:”.

**Substitution of section 14 of Act 90 of 1993, as amended by section 8 of Act 35 of 1996**

7. The following section is hereby substituted for section 14 of the Magistrates Act, 1993:

**“Powers and duties of magistrates**

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14. (1) A magistrate shall possess the powers and perform the duties conferred on or assigned to him or her by or under the laws of the Republic or, in any specific case, by the Minister after consultation with the Commission.

(2) The Minister may, after consultation with the Commission, make regulations conferring on or assigning to magistrates administrative powers and duties which do not affect the judicial independence of magistrates, including regulations empowering the Minister, after consultation with the Commission, to confer or assign administrative powers and duties of a general nature on or to magistrates.

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(3) The provisions of section 16(2) shall apply with the necessary changes in respect of any regulation made under subsection (2).

**Amendment of section 16 of Act 90 of 1993, as amended by sections 7 and 8 of Act 35 of 1996**

8. Section 16 of the Magistrates Act, 1993, is hereby amended by the addition of the following subsection:

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“(6) A regulation made under subsection (1)(j), and which regulates the attendance of persons at misconduct proceedings contemplated in such a regulation, may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.”

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**Short title**

9. This Act shall be called the Magistrates Amendment Act, 1998.